

STATE OF MICHIGAN
COURT OF APPEALS

TOHNNI J. JONES,

Plaintiff-Appellee,

v

LOUIS P. GIANNOTTI,

Defendant-Appellant.

UNPUBLISHED

September 4, 2008

No. 282447

Livingston Circuit Court

LC No. 94-021959-DM

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendant Louis Giannotti appeals as of right from the trial court's November 19, 2007, order denying his emergency motion to enforce prior domicile and parenting time orders. We affirm.

The minor child at issue in this case, Brandon, was born to plaintiff Tohnni Jones on June 26, 1992. In July 1993, the Wayne Circuit Court issued an order of filiation adjudging Jeffrey Lennon to be Brandon's father. The order of filiation provided that Jones would retain custody of Brandon. Jones was ordered not to remove the domicile of Brandon from either the state of Michigan or the state of Washington without the prior approval of the court.

Later, in the same month the order of filiation was entered, Jones married Giannotti. In November 1994, Jones filed a complaint for divorce against Giannotti in Livingston Circuit Court. In her complaint, Jones incorrectly alleged that Brandon was born during the parties' marriage, and Giannotti did not dispute the error. In the judgment of divorce, the parties received joint legal custody of Brandon, but Jones was awarded physical custody. In July 2004, upon the consent of the parties, the trial court entered an amendment to the judgment of divorce. The parties were granted joint legal and physical custody of Brandon, although Brandon would primarily reside with Jones in Texas. Giannotti received reasonable parenting time.

In May 2005, Jones filed a motion for modification of the judgment of divorce with regard to Brandon. She argued that, given the 1993 order of filiation entered by the Wayne Circuit Court, the trial court was without subject matter jurisdiction to resolve any custody disputes concerning Brandon. Giannotti subsequently moved for a change of custody and requested that Brandon's domicile be returned to the state of Michigan. The trial court denied Jones's motion for modification of the judgment of divorce. After holding an 11-day evidentiary hearing, the trial court, in an order dated September 15, 2005, found Giannotti to be Brandon's

equitable father. It granted sole legal custody of Brandon to Giannotti. While the parties maintained joint physical custody of Brandon, the trial court ordered that Brandon's domicile be returned to the state of Michigan. Brandon's primary residence for school attendance purposes would be with Giannotti in the state of Michigan. Jones received reasonable parenting time.

Jones appealed the trial court's order for change of custody to this Court. A majority of the panel, Hoekstra P.J., and Markey, J., held that, because Jones alleged in her complaint that Brandon was born of her marriage to Giannotti, the trial court, pursuant to MCL 552.16, had subject matter jurisdiction to decide issues concerning the custody of Brandon. *Jones v Giannotti*, unpublished opinion per curiam of the Court of Appeals, issued July 17, 2007 (Docket No. 266568), slip op at 3.¹ However, the panel held that, because of the previous order of filiation from the Wayne Circuit Court, the trial court erred in exercising its jurisdiction. *Id.* at 3-4. Because an error in the exercise of jurisdiction does not render a trial court's judgment void and subject to collateral attack, the prior panel held that Jones's post-judgment collateral attack was not an appropriate method to attack the judgment of divorce. *Id.* at 3. Nonetheless, the prior panel reversed the trial court's award of sole legal and joint physical custody of Brandon to Giannotti. *Id.* at 3-4. It stated: "[W]e agree with Jones that, insofar as MCR 3.205(C)(2) precludes a custody order that is 'contrary to or inconsistent' with a prior court's continuing order regarding custody, the Livingston Circuit Court's order granting Giannotti sole legal and joint physical custody of Brandon is improper and must be reversed." *Id.*

Giannotti subsequently moved the trial court to enforce the parenting time and domicile provisions of the September 15, 2005, order or, in the alternative, to enforce the custody and parenting time provisions of the July 2004 amendment to the judgment of divorce. The trial court denied Giannotti's motion, explaining that any order that enforced those provisions would be contrary to the order of filiation. Giannotti now appeals.

Whether the trial court had the authority to enforce the parenting time and domicile provisions of the September 15, 2005, order or, in the alternative, the custody and parenting time provisions of the July 2004 amendment to the judgment of divorce is a question of law. We review questions of law de novo. *Brown v Loveman*, 260 Mich App 576, 591; 680 NW2d 432 (2004).

The order of filiation was entered by the Wayne Circuit Court pursuant to the paternity act, MCL 722.711 *et seq.* Thus, the Wayne Circuit Court had continuing jurisdiction over the care and custody of Brandon. See MCL 722.720. Even though the trial court had subject matter jurisdiction over the care and custody of Brandon, *Jones, supra*, it was prohibited from entering "orders contrary to or inconsistent with" the order of filiation. MCR 3.205(C)(2).

Giannotti claims that the trial court erred in refusing to enter an order enforcing the parenting time and domicile provisions of the September 15, 2005, order. He argues that these portions of that order remained valid after this Court's decision in *Jones, supra*. We disagree, because the prior panel implicitly reversed those provisions when it explicitly reversed the award

¹ Judge Wilder dissented in part.

of sole legal and joint physical custody of Brandon to Giannotti.² When parents are awarded joint physical custody of a child, “the child shall reside alternately for specific periods with each of the parents,” MCL 722.26a(7)(a), and “the court may include in its award a statement regarding when the child shall reside with each parent,” MCL 722.26a(3). Thus, in the September 15, 2005, order’s provisions providing for parenting time, the trial court merely stated when Brandon would reside with each party. The parenting time provisions simply effectuated the trial court’s award of joint physical custody. There would be no need for these provisions if Giannotti did not have custody rights to Brandon. In addition, the domicile provision was necessary only because of the trial court’s award of joint physical custody and its determination regarding when Brandon was to reside with each parent. Because the state of Michigan would be Brandon’s primary residence and that is where he would be attending school, Michigan was to be Brandon’s principal and permanent home.³ Under the circumstances, the prior panel implicitly reversed the parenting time and domicile provisions in the September 15, 2005, order when it reversed the award of sole legal and joint physical custody of Brandon to Giannotti. Because the provisions were reversed, they were not subject to enforcement by the trial court. The trial court did not err in refusing to enter an order enforcing the parenting time and domicile provisions of the September 15, 2005, order.

Giannotti also argues that the prior panel did not reverse the trial court’s finding that he was the equitable father of Brandon. Again, we disagree. The trial court initially declared Giannotti as the child’s equitable father so that it could award sole legal and joint physical custody of Brandon to Giannotti. See *York v Morofsky*, 225 Mich App 333, 337; 571 NW2d 524 (1997) (“[o]nce it is determined that a party is an equitable parent, that party becomes endowed with both the rights and responsibilities of a parent”). The rights and responsibilities of a parent include the right to seek custody of his child. See *Sinicropi v Mazurek*, 273 Mich App 149, 168; 729 NW2d 256 (2006). The trial court’s finding that Giannotti was Brandon’s equitable father was “contrary to or inconsistent with” the order of filiation. MCR 3.205(C)(2). Because the order of filiation established that Lennon was Brandon’s legal father, Brandon already had a father endowed with the rights and responsibilities of a parent. Giannotti has provided us with no case law, and we are aware of none, that permits a child to have two legal fathers. The ground on which the trial court based its award of sole legal and joint physical custody was “contrary to or inconsistent with” the order of filiation, MCR 3.205(C)(2), and we conclude that

² As noted in *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001), “[t]he law of the case doctrine [provides] that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue.” The doctrine applies “to issues actually decided, either implicitly or explicitly, in the prior appeal.” *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

³ Domicile is defined as “[t]he place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” Black’s Law Dictionary (8th ed).

the panel implicitly reversed the trial court's finding that Giannotti was Brandon's equitable father when it reversed the custody award.

Giannotti claims that, even if the panel reversed the parenting time and domicile provisions in the September 15, 2005, order, the trial court erred when it refused to enforce the custody and parenting time provisions in the July 2004 amendment to the judgment of divorce and a related May 2005 order.⁴ Giannotti asserts that an order to enforce the provisions would not violate MCR 3.205(C)(2). We disagree. An order requiring Jones to comply with the custody and parenting time provisions in the July 2004 amendment and the related May 2005 order would have required Jones to share legal and physical custody of Brandon with Giannotti and to set up a schedule for when Brandon was to reside with Giannotti. Because the order of filiation granted sole legal and physical custody of Brandon to Jones, an order requiring Jones to share legal and physical custody of Brandon with Giannotti would have been "contrary to or inconsistent with" the order of filiation. MCR 3.205(C)(2). Accordingly, the trial court did not err in refusing to enter an order enforcing the custody and parenting time provisions at issue.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter

⁴ In May 2005, the trial court ordered that Giannotti's summer parenting time would begin at noon on May 28, 2005. This order did not, however, change the parties' custodial relationship concerning Brandon as established in the July 2004 amendment.